

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

VINCENT BRUCE, 16018-66,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

DECISION AND ORDER

12-CV-6289L

06-CR-6101L



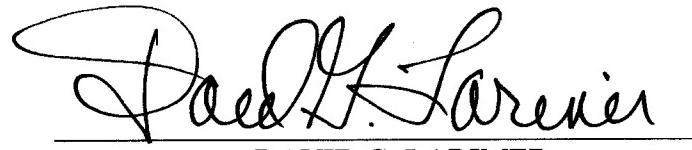
The petitioner, Vincent Bruce, acting *pro se*, filed his request for relief on papers provided by this Court for seeking relief pursuant to 28 U.S.C. § 2255 by vacating, setting aside or correcting a sentence.

Because a one-year period of limitations applies to a motion attacking sentence by a person in federal custody under 28 U.S.C. § 2255 and Rule 9 of the Rules Governing Section 2255 Cases in the United States District Courts and petitioner's conviction was final on April 27, 2007, the Court directed petitioner to respond as to why his motion is not time-barred. Petitioner has now responded that he is not seeking to vacate his conviction, but, rather, is seeking permission to file an "out-of-time appeal" on the basis that he directed his defense counsel to do so and counsel failed to file his appeal (Docket # 29, page one). The Clerk of Court is hereby directed to re-docketed petitioner's application as a request to file a late notice of appeal.

The Federal Rules of Appellate Procedure (FRAP) provide that a defendant must file a notice of appeal within 14 days after the entry of the judgement or the order being appealed. FRAP 4(b)(1)(A)(i). Federal Rule of Appellate Procedure 4(b)(4) provides that "upon a finding of excusable neglect or good cause, the district court may-before or after the time has expired, with or

without motion and notice- extend the time to file a notice of appeal for a period *not to exceed 30 days* from the expiration of the time otherwise prescribed by this Rule 4(b)." FRAP 4(b)(4), (emphasis added). Judgement was entered in this matter on April 27, 2007. This Court may not, pursuant to the Federal Rules of Appellate Procedure, extend the time for filing the notice of appeal beyond 30 days after that time. Therefore, this Court does not have the power to grant permission to file an out-of-time appeal at this late date, regardless of whether the Court would find excusable neglect or good cause. The request to file a late notice of appeal is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

DATED September 27, 2012
Rochester, New York